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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THOMAS ANTORIETTO, Plaintiff and Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Defendants and Respondents.	D037760 (Super. Ct. No. 715252)

APPEAL from a judgment of the Superior Court of San Diego County, J. Richard Haden, Judge. Affirmed.

Thomas Antorietto filed a wrongful termination action in which he named as defendants the Regents (the Regents) of the University of California (the University), Richard Atkinson, Stephen Wasserman, John F. Alksne, Michael P. Melman, John A. Woods, Stephanie Peterson and Robert Mannie. The superior court granted the defendants' motion for summary judgment based on its determinations that Antorietto failed to exhaust his administrative remedies, he lacked any property or liberty interest in continued employment, and the defendants' liability was barred by statutory and common

law immunities. Antorietto appeals, contending that (1) he exhausted every administrative remedy available to him at the time; (2) he had a property and/or liberty interest in continued employment, thus entitling him to procedural due process protections prior to his termination; (3) the individual defendants were not immune from liability for violations of his civil rights under 42 United States Code section 1983; and (4) the statutory and common law immunities do not apply to his claims. We find Antorietto's arguments ultimately unavailing and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In accordance with the rules governing appellate review of the trial court's granting of summary judgment, the factual recitation is based on a construction of the evidence most favorable to Antorietto (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768) as follows:

In 1975, the Regents hired Antorietto as management services officer for the School of Medicine at the University's San Diego campus (UCSD). A year later, Antorietto took an unpaid position as the treasurer for the Medical Education and Research Foundation (the Foundation), an independent nonprofit corporation set up to provide continuing education at UCSD and to facilitate clinical research by UCSD medical staff. Administrative officials from UCSD and the School of Medicine were aware of Antorietto's dual employment. Beginning in 1980, Antorietto was compensated for his work as the Foundation's treasurer.

From the early 1980's to mid-1995, the Foundation administered the majority of the clinical trials conducted by university medical staff at UCSD. In connection with the

clinical trials, the Foundation accepted donor funds on its own behalf. Further, it reimbursed UCSD for actual costs incurred in conducting its clinical trials, but did not pay any general facility overhead costs attributable to its use of the facilities.

In 1995, the Regents responded to allegations of misuse of University resources at another campus by ordering an internal audit of "support groups" at all campuses, to determine whether clinical administrators were misusing University resources or failing to comply with applicable Regents' policies. As part of the investigation, the UCSD Internal Audit Department identified the Foundation as a support group and demanded access to its books and records. However, claiming that it was not a support group, the Foundation refused to turn over its records. Defendant Atkinson (then the Chancellor of UCSD) ordered an investigation of the Foundation, and defendants Peterson and Mannie conducted an audit and prepared a draft report.

Based on the draft audit report, the Regents placed Antorietto on paid administrative leave from his management services officer position in February 1996. (All further relevant dates are in 1996 except as otherwise specified.) Defendant Wasserman, the Chair of the School of Medicine, instructed Antorietto not to conduct any UCSD business or contact any of his staff members while on leave.

Antorietto subsequently met with Wasserman, who told him he could have the management services officer position back but later appointed another person to perform the duties of that job. Antorietto originally refused to respond to auditors' questions about his work on behalf of the Foundation, but after being ordered by Wasserman and others to do so, he submitted to an extensive audit interview in April. Antorietto

provided a detailed summary of errors and omissions in response to the initial audit report.

In June, UCSD's Director of Employee Labor and Relations (defendant Melman) and the Dean of the UCSD School of Medicine (defendant Alksne) informed Antorietto that the Regents planned to terminate him. Antorietto responded with a letter advising that he intended to retire on November 1, 1996, which Melman accepted. Melman met with Antorietto's attorney and told him that grievance procedures were available pursuant to the University's Management and Professional Program Personnel Policies (MAP) in connection with Antorietto's complaint about being placed on administrative leave.

The Regents and Antorietto exchanged correspondence regarding Antorietto's employment and attempted to negotiate an agreement on Antorietto's separation from the School of Medicine. During the negotiations, Antorietto and his attorney informed the Regents that Antorietto did not plan to retire. In November, after extensive prior negotiations, Melman and Alksne informed Antorietto that they were not authorized to enter into an agreement with him.

The UCSD Internal Audit Department issued its final audit report relating to the Foundation in November. The report concluded that Antorietto negotiated University service agreements without authority, violated statutory conflict of interest rules, conducted School of Medicine business while on leave and advised a private sponsor to deposit with the Foundation funds the donor intended to benefit UCSD. In November or December, Wasserman left Antorietto a message that the Regents had dropped him from

its payroll, retroactive to November 1, based on its acceptance of his retirement. In February 1997, Melman confirmed this by letter.

In October 1997, Antorietto filed this action against the defendants, asserting claims for wrongful termination in violation of due process rights, violation of liberty interest in employment, violation of civil rights, constructive discharge, wrongful discharge in violation of public policy, tortious interference with contractual relationship, defamation, fraud, injunctive relief and violation of the Public Health Services Act (42 U.S.C. § 300 et seq.) and petitioning for a writ of mandamus. The superior court entered judgments in favor of the defendants after it sustained their demurrers without leave to amend for failure to allege exhaustion of administrative remedies.

Antorietto appealed and, in a nonpublished opinion, this court reversed the judgments. (*Antorietto v. Atkinson* (June 14, 2000, D031167).) We concluded that (1) the defendants had not shown that the University's administrative procedures governing employee grievances complied with due process and were sufficiently well defined to support the application of the exhaustion doctrine; (2) Antorietto's complaint did not allege facts showing that he exhausted his administrative remedies or that an attempt to exhaust such remedies would have been futile; and (3) if he was otherwise required to exhaust his administrative remedies, Antorietto was not excused from doing so merely because his complaint sought relief that was unavailable in the administrative forum. We reversed and remanded the matter with directions to the superior court to enter an order overruling the demurrers.

On remand, the defendants moved for summary judgment or summary adjudication of Antorietto's claims, which the superior court granted. In its ruling, the court adjudicated Antorietto's state law claims on the ground that he failed to exhaust available administrative remedies. It also concluded that, even if the exhaustion doctrine did not apply, the state law claims would nonetheless fail because Antorietto did not have a property or liberty interest in his job, the audit report in any event established good cause for his termination and the individual defendants were statutorily immune from liability for all of Antorietto's state law claims. The court also concluded that the Regents were not "persons" subject to liability under section 1983 of title 42 of the United States Code, and that the individual defendants were immune from liability under that section pursuant to a qualified common law immunity. Antorietto again appeals.

DISCUSSION

1. *Standard of Review*

In reviewing the trial court's ruling granting summary judgment, we exercise our independent judgment to determine whether the defendants have shown undisputed facts that either negate Antorietto's claims or establish a complete defense thereto. (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 487.) We also review de novo the trial court's resolution of issues of law. (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 531.)

2. *Exhaustion of Administrative Remedies*

As discussed in our prior opinion in this case, the doctrine of exhaustion of administrative remedies provides that a party objecting to a particular administrative

action must first pursue any available administrative remedies before seeking judicial review of the action. (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) The exhaustion requirement recognizes the expertise of the organization's quasi-judicial tribunal, and promotes judicial efficiency by unearthing the relevant evidence and providing a record that a court may review. (*Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 476.)

The exhaustion doctrine applies only where the administrative grievance procedure includes "'clearly defined machinery'" pursuant to which the agency receives, evaluates and resolves complaints from an aggrieved party (*Jacobs v. State Bd. of Optometry* (1978) 81 Cal.App.3d 1022, 1029) and complies with fundamental notions of due process. (*Bockover v. Perko, supra*, 28 Cal.App.4th at p. 486.) The procedure must provide the aggrieved party with reasonable notice and a reasonable opportunity to be heard, including an opportunity to present evidence to an impartial factfinder. (*Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 342; see *Bockover*, at p. 489, fn. 7.)

Antorietto's claims are based on allegations that the Regents improperly placed him on administrative leave and/or wrongfully terminated him. Thus, in determining whether Antorietto was required to exhaust administrative remedies as a prerequisite to pursuing these claims in a judicial forum, we must consider whether the evidence shows that the administrative procedure was sufficiently well defined and provided Antorietto with notice and an opportunity to be heard on his grievances.

Antorietto's complaint alleges that his employment was governed by the University's Staff Personnel Policies (SPP). However, the evidence shows that SPP did not apply to Antorietto's position. Rather, at the time the Regents placed Antorietto on administrative leave, MAP set forth the applicable grievance procedures for a management services officer, such as Antorietto. In July, the University adopted a new personnel program entitled "Personnel Policies for Staff Members" (PPSM) to replace SPP and MAP.

The defendants admit that MAP applied to Antorietto's complaints about being placed on administrative leave. However, as noted in our prior opinion, MAP did not provide an employee with a right to a hearing or an evidentiary investigation of a complaint about being placed on administrative leave. Further, the defendants did not present any evidence to establish that rules implementing MAP provided such rights.

Because the University's personnel procedures did not provide for a hearing or opportunity to present evidence to an employee who complains about being placed on administrative leave, those procedures did not constitute a "remedy" to which the exhaustion doctrine applies. Accordingly, to the extent that Antorietto's claims are based on a contention that the University improperly placed him on administrative leave, those claims are not barred for failure to exhaust administrative remedies.

Antorietto's first, fourth, fifth and tenth causes of action, however, challenge only his termination or constructive termination. The evidence submitted by the defendants in support of their motion for summary judgment establishes that all of the University's personnel policies (whether SPP, MAP or PPSM) complied with due process

requirements, by, inter alia, providing a terminated employee with the right to an evidentiary hearing of his claims arising from his termination.

Antorietto contends that although the PPSM was in effect at the time of his termination, he was not aware of the newly adopted policies until after he filed this action. However, the allegations of the complaint make clear that Antorietto was aware of the University's SPP procedures before he filed this action. Further, there is evidence in the record that, after Antorietto was place on administrative leave, Melman informed Antorietto's attorney that he could challenge that administrative action through MAP.

Despite his awareness that the University had personnel grievance procedures in place, Antorietto did not attempt to determine what procedures applied or to initiate formal review of his grievances in accordance with those procedures. Because Antorietto failed to exhaust available administrative remedies for challenging his termination, summary adjudication of his first cause of action (wrongful termination in violation of due process), fourth cause of action (constructive discharge), fifth cause of action (wrongful termination in violation of public policy), sixth cause of action (permanent injunctive relief requiring the defendants to reinstate him and refrain from terminating him without complying with due process) and tenth cause of action (writ of mandate compelling the defendants to reinstate him with back pay and benefits) was appropriate.

3. *Governmental Discretionary Act Immunity*

In California, all government tort liability is based on statute. (Gov. Code, § 815, subd. (a) ["Except as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a

public employee or any other person"].) (All further statutory references are to the Government Code except as otherwise noted.) However, pursuant to the California Tort Claims Act (§ 810 et seq.), a public employee is liable for his or her torts unless a statute provides otherwise. (§ 820, subd. (a).) Generally, a public entity is vicariously liable for the torts of its employees, but immune from liability when its employees are immune. (§ 815.2.)

Section 820.2 codifies an immunity that existed at common law for discretionary acts of a government official performed within the scope of his or her authority. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 683; *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 979-980.) Pursuant to section 820.2, a public employee "is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

Despite the breadth of its language, section 820.2 does not establish immunity for all acts by public employees that involve some element of choice among alternatives. (E.g., *Johnson v. State of California* (1968) 69 Cal.2d 782, 787-790.) Rather, "[i]mmunity is reserved for those 'basic policy decisions [which have] . . . been [expressly] committed to coordinate branches of government,' and as to which judicial interference would thus be 'unseemly.'" (*Caldwell v. Montoya, supra*, 10 Cal.4th at p. 981, italics omitted.) It has been observed that the scope of the discretionary act immunity "should be no greater than is required to give legislative and executive policymakers sufficient breathing space in which to perform their vital policymaking functions" (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 445) and, in applying the statutory immunity, courts have

generally recognized immunity for decisions involving "'planning,'" but not for those that are merely "'operational'" in nature. (*Caldwell*, at p. 981; see *Sanborn v. Chronicle Pub. Co*. (1976) 18 Cal.3d 406, 415 [city and county clerk's decision to discuss a particular matter with the press was a matter within the routine duties incident to the normal operations of the clerk's office and thus did not give rise to immunity].)

Prior to the enactment of section 820.2, several courts concluded that, under common law, public sector supervisors were immune from personal liability for personnel decisions and actions within the course and scope of their duties. (*Hardy v. Vial* (1957) 48 Cal.2d 577 [common law immunity applied to bar professor's wrongful discharge claim against the college, its deans and a department head]; *Lipman v. Brisbane Elementary Sch. Dist*. (1961) 55 Cal.2d 224 [common law immunity existed for trustees' conduct in evaluating and investigating job performance of school superintendent].) After the common law immunity was codified in section 820.2, cases applying the statute in the context of a public employee's wrongful discharge action against his superiors similarly held that section 820.2 barred such an action. (*Caldwell v. Montoya*, *supra*, 10 Cal.4th at pp. 982-983 [immunity barred school superintendent's wrongful termination action against school board members who voted to dismiss him]; *Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1438 [similar, social worker's action against two of his superiors]; see *Read v. City of Lynwood* (1985) 173 Cal.App.3d 437, 442 [section 820.2 extends immunity to public employer's exercise of its statutorily-authorized discretion to terminate a probationary employee, provided that the employer complies with the statutory requirements].) Antorietto has cited no case, nor have we found one, holding to the contrary.

In light of these authorities applying section 820.2 immunity in this context and mindful of the doctrine of stare decisis, we conclude that section 820.2's immunity for discretionary acts by a public employee applies to the defendants' initial decision to place Antorietto on administrative leave pending the University's investigation and audit of the Foundation and their ultimate decision to terminate him. (*Barner v. Leeds, supra,* 24 Cal.4th at pp. 685-686, fn. 2.) Accordingly, summary adjudication of Antorietto's second and seventh causes of action was appropriate.

4. *Privilege for Communications Made in an Official Proceeding*

Civil Code section 47, subdivision (b) (Civil Code section 47(b)) creates a privilege against liability for a publication or broadcast made in any legislative or judicial proceeding or "any other official proceeding authorized by law" or in the initiation or course of any other proceeding authorized by law and reviewable by mandate. "The privilege conferred by . . . section [47b] is absolute and is unaffected by the existence of malice." (*Dorn v. Mendelzon* (1987) 196 Cal.App.3d 933, 941.) This privilege is intended "'to assure [the] utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing.'" (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 213, quoting *Imig v. Ferrar* (1977) 70 Cal.App.3d 48, 55.)

For the purposes of applying this privilege, "any other official proceeding authorized by law" refers to proceedings that resemble judicial and legislative proceedings, such as transactions of administrative boards and administrative proceedings that are quasi-judicial and quasi-legislative in nature. (*Prevost v. First Western Bank* (1987) 193 Cal.App.3d 1492, 1498.) In determining if a particular proceeding is an

"official proceeding" within the statutory definition, the following factors are relevant: (1) whether the administrative body is vested with discretion based upon investigation and consideration of evidentiary facts, (2) whether it is entitled to hold hearings and decide the issue before it by the application of rules of law to the ascertained facts and (3) whether its power affects the personal or property rights of private persons. (*Ibid.*)

There is no published case addressing the issue of whether an investigative audit conducted by the Regents is an "official proceeding" for purposes of Civil Code section 47(b). The defendants contend, however, that *Braun v. Bureau of State Audits* (1998) 67 Cal.App.4th 1382 (*Braun*) compels the conclusion that its audit was an "official proceeding." In *Braun*, the former medical director of a research and training center at the University's San Francisco campus sued the Bureau of State Audits (the Bureau) for defamation and other torts after the state auditor issued an investigative audit report indicating, inter alia, that she had "'grossly mismanaged'" the center, entered into contracts despite conflicts of interest, and falsified various financial records relating to the center. (*Id.* at p. 1386.) (According to the defendants, the facts underlying *Braun* triggered the Regents' decision in 1995 to audit all university support groups.) The appellate court affirmed a judgment of dismissal after demurrer in favor of the Bureau, concluding that the Bureau's report was absolutely privileged under Civil Code section 47(b). (*Braun*, at p. 1394.)

As Antorietto points out, *Braun* is not on all fours with the facts of this case. There the court's determination that the Bureau's investigation and audit was an "'official proceeding authorized by law'" was based at least in part on the fact that the Bureau was

authorized *by statute* to investigate and report on improper governmental activities, including those at the University. (*Braun*, *supra*, 67 Cal.App.4th at p. 1388, citing *Braun v. Chronicle Publishing Co*. (1997) 52 Cal.App.4th 1036, 1043, 1048.) However, this distinguishing factor does not render the analysis of *Braun* inapplicable here.

A proceeding need not be authorized by statute to qualify as an "official proceeding" under Civil Code section 47(b). Rather, it is sufficient if the proceeding is authorized by local ordinance or a public agency's own administrative regulations. (*E.g.*, *Imig v. Ferrar*, *supra*, 70 Cal.App.3d at p. 55 [internal police investigation of allegations against an officer was an official proceeding where procedures for discipline, suspension or removal of officers were specified in the city charter and administrative code]; *Ascherman v. Natanson* (1972) 23 Cal.App.3d 861, 865-867 [hospital district proceeding conducted in accordance with regulations adopted by the district was quasi-judicial in nature and thus constituted an official proceeding for purposes of the predecessor to Civ. Code § 47(b)].)

Here, the investigative audit was conducted pursuant to policies and procedures adopted by the Regents to govern investigations of alleged misuses of University resources. In light of the Regents' virtually exclusive governance and policy-making power over the University (*Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135), an investigative audit proceeding conducted in accordance with its policies and procedures qualifies as an "official proceeding authorized by law," as that language has been interpreted by the long-standing authorities set forth above. Antorietto's claims for defamation and fraud (his eighth and ninth causes

of action, respectively) are based on statements made during the course of the audit investigation, which such statements are privileged in accordance with the foregoing authorities. Summary adjudication of these claims was proper.

5. *Eleventh Amendment Immunity*

Claims under 42 United States Code section 1983 are limited by the scope of the Eleventh Amendment. States or governmental entities that are considered "arms of the state" for Eleventh Amendment purposes are not "persons" subject to liability under section 1983. (*Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 70; *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 348.) The Regents are an "arm of the state" for this purpose and thus immune from liability under section 1983 (*Thompson v. City of Los Angeles* (9th Cir. 1989) 885 F.2d 1439, 1442-1443), a point Antorietto concedes. Thus, summary adjudication of Antorietto's third cause of action for civil rights violations under section 1983 in favor of the Regents was proper.

6. *Qualified Immunity from 42 United States Code Section 1983 Liability*

A government official may have qualified immunity from liability for alleged violations of 42 United States Code section 1983. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 342.) In this context, qualified immunity "'shield[s] public officials "from undue interference with their duties and from potentially disabling threats of liability."'" (*Ibid*.) A public official is qualifiedly immune from section 1983 liability unless his conduct violates '"'clearly established statutory or constitutional rights of which a reasonable person would have known." [Citation.]'" (*Susag v. City of Lake Forest* (2002) 94 Cal.App.4th 1401, 1413-1414.)

There is no question that the doctrine of qualified immunity may apply to bar claims arising out of an official's demotion, evaluation or termination of an employee. For example, in *U.S. v. Collicott* (9th Cir. 1996) 92 F.3d 973, 972-973, the Ninth Circuit Court of Appeals applied qualified immunity to bar a college professor's claim that school officials improperly took disciplinary action against him for sexual harassment based on statements he made during class in violation of his First Amendment rights to free speech and academic freedom and his rights to due process. The Ninth Circuit concluded that because the legal contours of what protection the First Amendment provides to classroom speech were not "clearly established" at the time the action was taken, the defendants were entitled to the protection of qualified immunity for their actions. (*Id*. at pp. 971, 973.)

Here, Antorietto's complaint alleges that the individual defendants' conduct violated his due process rights. However, constitutional due process protections "apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." (*Board of Regents v. Roth* (1972) 408 U.S. 564, 569.) Thus, a preliminary question affecting the viability of Antorietto's 42 United States Code section 1983 claim against the individual defendants is whether Antorietto had an interest in his employment "within the Fourteenth Amendment's protection of liberty and property" so as to trigger due process rights. (*Board of Regents v. Roth, supra,* at p. 571; *Siegert v. Gilley* (1991) 500 U.S. 226, 232.)

Antorietto contends that, based on his status as a "permanent employee" under MAP or PPSM, he had a property interest in continued employment with the University. However, under both MAP and PPSM, Antorietto's employment was subject to

termination when, in his superiors' judgment, the needs or resources of the department or his performance or conduct "[did] not justify the continuation of [his] appointment." Thus Antorietto did not have a right to, or a due process property interest in, continued employment with the University. (*King v. Regents of University of California* (1982) 138 Cal.App.3d 812, 815-816; see *Holmes v. Hallinan* (1998) 68 Cal.App.4th 1523, 1530.)

Antorietto also claims, however, that the individual defendants deprived him of a liberty interest without due process. Where a public employee is terminated or disciplined based on charges that adversely implicate his good name, reputation, honor or integrity, his liberty interest due process rights are implicated. (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 348, and cases cited therein.) Charges of mere incompetence are not sufficient to implicate a terminated employee's liberty interest; rather they must involve moral turpitude, dishonesty or immorality. (*Loehr v. Ventura County Community College Dist.* (1984) 743 F.2d 1310, 1317-1318.)

Here, the alleged accusations against Antorietto included the misuse of University funds and fraudulent diversion of donor funds intended for the University to the Foundation. These alleged accusations involve moral turpitude and dishonesty and thus are sufficient to implicate a liberty interest, entitling Antorietto to notice and an opportunity to refute the charge and clear his name. (*Roth*, *supra*, 408 U.S. at p. 573, fn. 12.)

Although the record establishes Antorietto's due process liberty interest, it also establishes that the defendants provided Antorietto with all of the pre-termination process to which he was entitled. The evidence shows that Antorietto participated in the investigative audit and was given an opportunity to challenge the resulting report. This is

sufficient to comply with an employee's pretermination due process rights. (*Cleveland Board of Education v. Loudermill* (1985) 470 U.S. 532, 545-546.) As there was no violation of Antorietto's due process rights, there is no basis for his 42 United States Code section 1983 claim against the individual defendants. Summary adjudication of that claim in favor of the individual defendants is thus also appropriate.

7. *Conclusion*

The defendants have established that Antorietto had an adequate administrative procedure available to him to challenge his termination and that he failed to utilize the formal aspects of that procedure. Accordingly, Antorietto's termination-based claims are barred by the exhaustion of remedies doctrine. Further, governmental discretionary act immunity applies to the individual defendants' personnel decisions relating to Antorietto, and because the individuals are immune from liability for those decisions, so too are the Regents. The alleged defamatory or fraudulent statements made during the course of the audit investigation are privileged under Civil Code section 47(b). Finally, 42 United States Code section 1983 does not apply to the Regents and, in any event, the evidence establishes that the defendants did not violate Antorietto's civil rights.

DISPOSITION

The judgment is affirmed. The defendants are awarded their costs of appeal.

MCINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.